No. 83-786

In The

Supreme Court of the United States

October Term, 1983

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IN THE MATTER OF THE APPLICATION OF RICHARD S. SMALL TO THE STATE BAR OF NEVADA

—o—

On Appeal From The Supreme Court of the State of Nevada

—o—

APPELLANT'S OPPOSITION TO MULTIPLE MOTIONS TO DISMISS OR AFFIRM

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GERALD F. NEAL, ESQ.
2770 S. Maryland Parkway
Suite 500
Las Vegas, Nevada 89109
(702) 737-5333

Attorney of Record for Appellant, Richard S. Small

COCKLE PRINTING CO., 2311 Douglas St., Omaha 68102

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STATEMENT

This Opposition will seperately oppose the Appellee's Motion to Dismiss, Alternatively, Brief for Respondents in Opposition, filed by the Nevada State Board of Bar Examiners, and will also oppose the Motion Of Appellee's

Manoukian, Gunderson, Mowbray, Steffen and Springer To Dismiss Or Affirm, filed by the individual Justices of the Nevada Supreme Court through the Attorney General of the State of Nevada.

ARGUMENT

A. Opposition to the Individual Justices' Motion to Dismiss or Affirm

1. This Motion is untimely, and was filed with the intent to prejudice and delay this appeal and in the interests of justice must not be considered by this Court.

On or about December 2, 1983, Rodney M. Jean, attorney for Appellee Board of Examiners, approached the Appellant's attorney herein, and requested an extension of time *only* for the Board of Examiners. Thereafter an extension of time to respond was signed by Robert M. Buckalew, attorney for the Board of Examiners. Neither the Nevada Supreme Court nor the Nevada Bar were ever mentioned directly or impliedly in the negotiations for said extension. In fact, attorney Rodney M. Jean, very strongly asserted numerous times that the Board of Examiners do not represent the Nevada Supreme Court or the Nevada Bar. There has been absolutely no contact whatsoever to the Appellant from the Nevada Supreme Court, Nevada Bar or the Nevada Attorney General's Office. Furthermore, since the Board of Examiners have moved to dismiss as an improper party, it is prima facie that they did not represent the Nevada Supreme Court when said extension was signed.

An extension of time to file a motion to dismiss or affirm must be presented to this Court, Rule 29.4. Rule 16.1 states that an appellee must file such motions "within 30 days after receipt of the jurisdictional statement." The Nevada Supreme Court has through its own inexcusable neglect, failed to file an extension within which to dismiss or affirm. Accordingly, this motion is untimely, prejudicial and must be stricken by this Court.

2. Assuming arguendo that this motion is timely, the following is in opposition to said motion:

a. *Appellee properly served*

The individual Justices were never the proper parties to this case, nor has the Appellant ever asserted they were. All parties were merely served as a courtesy and the Justices sent seven copies pursuant to Nevada Rules of Appellate Procedure 31(b). The Nevada Supreme Court is the proper party Appellee herein, not the Justices individually.

b. *Statute was sufficiently attacked*

As stated in Appellant's Jurisdictional Statement (J. S. p. 5), the Appellant strongly and consistently throughout the underlying Petition, asserted that N.S.C.R. 51(3) was unconstitutional "as applied", and upheld by the Appellee Court. *Cohen v. California*, 403 U.S. 15, 18 (1971). No particular form of words are essential. The underlying Petition for Waiver sufficiently drew into question the repugnant violations of the Federal Constitution, by describing that graduates of the Appellant's school, foreign law schools and other non-ABA schools were routinely granted waivers, yet the Appellant was arbitrarily denied

without explanation. *Street v. New York,* 394 U.S. 576, 584 (1969). The Appellant has never asserted that denials of such waivers were unconstitutional per se. The underlying Petition asserted that Nevada has statutorially granted a benefit and right in Petitions for Waiver to a similarly situated class, and that the arbitrary denial and inconsistent application of that benefit violates the Fifth and Fourteenth Amendments. *Griffin v. Illinois,* 351 U.S. 12, 16-18 (1955). This Court clearly has jurisdiction as an appeal. See *District of Columbia Court of Appeals v. Feldman,* — U.S. —, 75 L.Ed.2d 206, 218, 222, 225, (1983), where this Court invitingly stated three times that "review of such determinations can be obtained only in this Court."

c. *The question is substantial*

The Appellee Court's only explanation to the Appellant was *In re Nort,* 96 Nev. 85, 605 P.2d 627 (1980), which told the Appellant little else than graduates of foreign law schools can practice in Nevada under extremely convoluted reasoning. To hold that a foreign law school is automatically acceptable because it is outside the geographical jurisdiction of the ABA is an absurd reasoning that contradicts itself. Is it not possible for a foreign law school to be run for profit and be acceptable and an American school run for profit be unacceptable under this reasoning. Rule 202 means very little to Nevada, it is only a technical guise to arbitrarily regulate the number of attorneys in Nevada, which is not rationally related to protection of the public. It is important to remember that Nevada had no law school when the Appellant began his legal education in 1978.

The Appellant in his Petition for Waiver tried to follow *Nort* to meet his burden of proof. The Appellant submitted the most comprehensive Petition humanly possible in twenty-five pages. Western State is arguably as fine a law school as any in the Phillipines.[1] The Appellant has cited superior authority in his jurisdictional statement (J. S. p. 6) to support his alleged denial of equal protection. *Murphy v. Egan,* 498 F.Supp. 240, 244 (Penn. 1980).

Finally, any mention of the Appellant's untimely Petition for Waiver (Motion p. 3), is irrelevant, since the Petition for Waiver went to final judgment, any untimeliness was waived by the Appellees. N.S.C.R. 56(1) (b), was also not the appropriate rule (J.S. Ex. 'E', pp. 2e-3e), and is clearly in contradiction to *Feldman,* and an unconstitutional denial of procedural due process. *N.A.A.C.P. v. Alabama,* 357 U.S. 449, 457 (1958).

B. Opposition to Motion to Dismiss of the Board of Examiners

1. In one breath, the Board of Examiners have asserted they are not proper parties, yet with the next breath they attempt to argue the merits of this case for the Nevada Supreme Court. The two positions are inconsistent. The Board of Examiners do not represent the Nevada Supreme Court. Furthermore, the Board of Examiners have prayed for nothing other than their own dismissal. (Mo-

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[1] The Chairman of the Nevada Board of Bar Examiners, Samuel S. Lionel, personally told the Appellant during a private meeting, that a graduate of a law school in the Phillipines was granted a Waiver in 1982. In 1982 a Ms. Julia Ledbetter, a graduate of the Potomac School of Law, the same law school as Appellant Hickey in *Feldman,* was also granted a Waiver.

tion p. 2). Accordingly, any discussion as to the merits by the Board of Examiners in said motion, is an inappropriate attempt to dismiss this appeal indirectly when they have chosen not to challenge it directly, and should not be considered by this Court.

2. In opposition to the inappropriate discussion on the merits, the Board of Examiners stated belief that review in this matter is properly by Writ of Certiorari is misplaced. Although the District of Columbia Court of Appeals is considered the same as a state's highest court, *Feldman* was an appeal from a Federal Court, and as such could only be reviewed by this Court by Writ of Certiorari. 28 U.S.C. § 1254. *Feldman* does not stand for the theory that review by this Court of denials of Petitions for Waivers of State Supreme Court Rules is only by Writ of Certiorari. Indeed, *Feldman* invites review by this Court.

3. Irrespective of the Board of Examiners' inappropriate attempt to argue the merits as a non-party, they have asserted inconsistencies which the Appellant must defend.

a. The Board of Examiners assert that the Appellant has "effectively conceded that denial of his Petition for Waiver was not arbitrary." (Motion p. 3). This is totally incorrect. The Appellant has never conceded that the denial of his Petition for Waiver was not arbitrary. To the contrary, the entire gravamen of the Appellant's Petitions for Waiver and Rehearing was the arbitrary and unconstitutional denial as applied of his admission, as well as the denial of procedural due process in the adjudication of his Petitions for Waiver and Rehearing.

b. The Board of Examiners further assert that the Appellant was "referred" to *Nort* (Motion p. 3), which

gave the Appellant "ample warning" that his law school was not acceptable in Nevada. (Motion p. 4). This is an impossibility. *Nort* was decided two years after the Appellant had applied for admission to Western State. Furthermore, since graduates of Western State were allowed to sit for the Nevada Bar before *Nort,* the Appellant did not knowingly apply to an unacceptable school to the Nevada Bar. It is also apparent that at least one graduate of Western State was allowed to sit for the Nevada Bar *after Nort* as well. Martindale-Hubble Law Directory, vol. iv (1983), Nevada Attorneys, p. 79, Robert F. Blankenbush. It should also be pointed out that Western State was listed as an acceptable school in the Nevada Bar Journal in 1978, before the Appellant applied for admission to Western State. (J.S. p. 6 n. 7). Appellant detrimentally relied on these official Bar publications.

CONCLUSION

In essence, the Nevada Supreme Court as the only proper-party Appellee to this case, has not responded to the Appellant's Jurisdictional Statement. The untimely Motion to Dismiss or Affirm from the Justices of the Nevada Supreme Court is in their individual capacities, and the Board of Examiners moving for non-party dismissal, are the only responses. Both motions discussions on the merits are inappropriate and should not be considered by this Court. This case is a question of paramount substantiality because the Appellant has been denied his Constitutional rights by the very guardians of civil liberties

in Nevada. The Appellant and the thousands of non-ABA graduates in this country, cry out for a meaningful opportunity to be heard. Probable jurisdiction should therefore be noted.

Dated this 17 day of January, 1983.

Respectfully submitted,

GERALD F. NEAL, ESQ.
2770 S. Maryland Parkway,
Suite 500
Las Vegas, Nevada 89109
(702) 737-5333

Attorneys for Appellant,
Richard S. Small